Report of the
Senate Interim Committee
On
Public Employee Collective Bargaining

2001-2002

REPORT OF SENATE INTERIM COMMITTEE ON PUBLIC EMPLOYEE COLLECTIVE BARGAINING

GOVERNOR'S EXECUTIVE ORDER 01-09

INDEX

SENATE INTERIM COMMITTEE ON PUBLIC EMPLOYEE COLLECTIVE BARGAINING

COMMITTEE MEMBERS

Senator John T. Russell, Chair
Senator John Loudon, Vice Chair
Senator Peter Kinder
Senator David Klarich
Senator David Klindt
Senator Larry Rohrbach
Senator Wayne Goode (Did Not Attend Any Meetings)
Senator Edward Quick (Did Not Attend Any Meetings)
Senator Danny Staples (Resigned)

SCHEDULE OF MEETINGS

SEPTEMBER 6, 2001

SENATE LOUNGE
STATE CAPITOL BUILDING
JEFFERSON CITY, MO

Members Present:

Senator John T. Russell, Chair
Senator John Loudon, Vice Chair
Senator Larry Rohrbach
Senator David Klarich
Senator Peter Kinder

Members Absent:

Senator Wayne Goode
Senator Edward Quick

Witnesses:

Mr. Donald W. Jones, Attorney, (Special Advisor to Committee)
Hulston, Jones, March & Shaffer
Springfield, MO

Senator John Schneider

Ms. Resa Siedhoff, Division of Personnel
Office of Administration

Invited Witnesses Who Chose Not To Appear:

Ms. Julie Gibson, Chief of Staff (See Letter Attached)
Governor's Office

Mr. Quentin Wilson (See Letter Attached)
Governor's Office

OFFICE OF THE GOVERNOR
STATE OF MISSOURI
JEFFERSON CITY
(573) 751-3222
www.gov.state.mo.us

BOB HOLDEN
GOVERNOR

ROOM 216
STATE CAPITO
65101

September 6, 2001

The Honorable John Russell, Chairman
Senate Committee on Collective Bargaining
State Capitol, Room 419
Jefferson City, MO 65101

Dear Senator Russell:

Thank you for your invitation to appear before the committee. The Governor's office has determined that it would be most appropriate for Commissioner of Administration Michael Hartmann to represent the Governor before your committee, as Commissioner Hartmann is the administration official is responsible for implementing the collective bargaining order. He is therefore best qualified to answer your questions as to how the process will proceed.

We are confident that Commissioner Hartmann will be able to answer most, if not all, of your questions regarding the Administration's plan to implement the collective bargaining order. In the event that you have questions Commissioner Hartmann is unable to answer at the hearing, we of course will do our best to follow up with the committee.

While we understand your interest in the collective bargaining issue, we certainly hope that it will not distract you from the far more urgent business at hand during the special session -- namely, the prescription drug legislation -- as well as other issues in the Governor's call. We look forward to working with you to pass a prescription drug plan that will help our state's most needy seniors.

Thank you.

Sincerely,

Julie Gibson
Chief of Staff

JG:kds

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BOB HOLDEN
GOVERNOR

ROOM 216
STATE CAPIT
65101

September 5, 2001

The Honorable John Russell
The State Senate
State Capitol Building, Room 419
Jefferson City, MO 65101

Dear Senator Russell:

Thanks for the invitation to participate in the Senate Interim Committee on Public Employee Collective Bargaining on September 6. Unfortunately, I am on annual leave at that time.

In response to your questions, first, I have not received any communications, memorandum, letters, etc. from the unions or others about the unionization of state employees, nor have I sent any.

Second, I am not responsible for coordinating or facilitating with the unions about work force improvements and increased productivity, nor was I involved in any discussions on the subject prior to January 1, 2001.

Sincerely,

Quentin Wilson

QW:bs

SCHEDULE OF MEETINGS

September 11, 2002

This meeting was cancelled due to the September 11 terrorist attack on the World Trade Center. This occurred at almost the same time as the Committee was to convene.

SEPTEMBER 20, 2001

SENATE LOUNGE
STATE CAPITOL BUILDING
JEFFERSON CITY, MO

Members Present:

Senator John T. Russell, Chair
Senate John Loudon, Vice Chair
Senator Larry Rohrbach
Senator David Klindt
Senator Peter Kinder
Senator David Klarich (Resigned. Replaced by Senator Klindt)

Members Absent:

Senator Wayne Goode
Senator Edward Quick

Witnesses:

Mr. Gary Gross, Missouri Correctional Officer's Association
Ms. Resa Siedhoff, Office of Administration
Division of Personnel
Mr. Mike Hartmann, Commissioner, Office of Administration

SCHEDULE OF MEETINGS

October 31, 2001

SENATE LOUNGE
STATE CAPITOL BUILDING
JEFFERSON CITY, MO

Members Present:

Senator John T. Russell, Chair
Senator David Klindt
Senator Larry Rohrbach

Witnesses:

Mr. Mike Hartmann, Commissioner, Office of Administration
Ms. Resa Siedhoff, Division of Personnel, Office of Administration
Mr. John Birch, Chair, State Board of Mediation

RECOMMENDATIONS OF THE SENATE INTERIM COMMITTEE ON PUBLIC EMPLOYEE COLLECTIVE BARGAINING

SB 641 - This bill was introduced in the 91st General Assembly, Second Regular Session, exempts certain employees from union membership, prohibits service fees and the payroll deductions for service fees.
(Debated but did not pass since time allowed was limited)

SB 705 - This bill was introduced in 2002 which would allow departments and divisions to exempt certain employees from union membership.
(Passed out of Committee as a Senate Committee Substitute SB 641 & 705)

SB 746 - This bill was introduced in 2002 which would allow recognition of a bargaining unit upon approval of majority of all employees in the unit.
(This bill was voted do pass from the Senate Labor Committee but not debated due to time)

PROPOSED AMENDMENT

Adopt a new provision which would be as follows, and which could be codified as RSMo §105.526:

"Any employee whose rights have been violated by a labor organization under this Statute may institute a petition in the Circuit Court of the County where the employee resides, or where the employee's rights were violated, and the labor organization which is shown to have violated the statutes shall be liable for compensatory and punitive damages and the employee's reasonable attorney fees, along with other relief that the Court may deem appropriate under the circumstances for injunctive orders, cease and desist orders, or otherwise.

Any employee of the State or any public body may also petition the Board of Mediation to revoke any certification of any labor organization which has violated the provisions of this Statute, or which has failed to fairly represent the employees of the appropriate unit, in such a flagrant manner as to reasonably call for a suspension or revocation of the certification of said labor organization to represent the unit involved. The Board of Mediation shall conduct investigations and hearings if necessary to determine the questions raised by such petition, and shall adopt rules and regulations to govern the procedures for such hearings and determinations, and any final conclusion of the Board of Mediation is subject to review under RSMo §105.525.

The Board of Mediation may assess reasonable attorney fees and costs to any labor organization who is found to have violated the laws of the State of Missouri, or abused its power as majority representative in connection with said proceedings."

PROPOSED AMENDMENT

Amend RSMo §105.969 to add a third paragraph as follows:

(3) **"Said Codes of Conduct shall specifically prohibit any employees of the Executive Branch, and any employee of the Governor, Secretary of State, Treasurer, Auditor, Attorney General or Lieutenant Governor, Members of the Missouri House of Representatives, Members of the Missouri Senate, from soliciting financial contributions or political support or endorsements from labor organizations which the official or anyone in that official's department or in a position subordinate to that official has had responsibility for meeting and conferring under RSMo §105.520, or with which said discussions have been held within two years prior to the solicitation, contribution or endorsement. Also, that official shall recuse himself from any discussions on behalf of the public body in relation to the activities of the labor organization within two (2) years after having solicited any endorsement, contribution or political support from any agent, official or representative of a labor organization which represents public employees of the department in which such official works.**

The Codes of Conduct shall also prohibit any employee, on behalf of the State of Missouri, from engaging in RSMo §105.520 discussions or deliberations or negotiations with labor organization if that officer or agent of the state is involved in political activities of a type which would make it appear that the State officer or agent would be granting favors to the labor organization in return for political favors in connection with the meet and confer process under RSMo §105.520."

Further Suggested Legislation

To further this type legislation, add a provision to RSMo §105.525 as follows:

"No labor organization which engages in campaigning for, endorsements of, or political contributions to or soliciting support for or contributions to, a candidate for public office shall be eligible to be certified or act as the exclusive representative for representing employees of any agency, department or subdivision of the State of Missouri where the employees represented by the labor organization would be working directly or indirectly under the public official involved in such election. In the event the labor organization is certified, it shall be required to affirmatively state under oath that it has not been involved in any political campaign for any such public official whose employees or subordinates would be represented by said labor organization within two (2) years prior to

the time when the labor organization seeks to be certified as representative, or thereafter during the conduct as exclusive representative of said public body employees. In the event that the Board of Mediation should be presented with evidence to show that the labor organization has violated this prohibition, the Board of Mediation shall, in accordance with rules and procedures generally applicable to such conduct, suspend or revoke the certification of the labor organization to serve as the exclusive representative of such employees."

CONCLUSIONS AND RECOMMENDATIONS FROM HEARINGS OF SENATE INTERIM COMMITTEE ON PUBLIC EMPLOYEE COLLECTIVE BARGAINING

Some of the conclusions and recommendations from the hearings are as follows:

One quote from Mr. Jones' Report which may help all to understand the difference in the public and private sector bargaining is the definition of employer as found in the NLRA and is listed as Item 1 below.

1. Section 2(2) of the National Labor Relations Act, 29 USC §152(2), in defining "Employer", excludes the United States, wholly owned government corporations, any Federal Reserve bank, "or any state or political subdivision thereof", or any person subject to the Railway Labor Act (45 USC §151 et seq.), in addition to excluding any labor organization except when acting as an employer, and excludes anyone acting in the capacity of officer or agent of such labor organization. Public local governments and states are not within the definition of employer.

The Missouri Public Employee labor law (RSMo §105.500 et seq.), covers employees only of the State of Missouri and political subdivisions of the State, but RSMo §105.510 excludes police, deputy sheriffs, Missouri State Highway patrolmen, Missouri National Guard, and all teachers of Missouri schools, colleges and universities.

Of the 12 to 14 units of State of Missouri employees covered by labor organizations who claim representative status, it was astounding to learn that nearly all those units were being represented by labor organizations which were not truly the chosen representative of a majority of the employees in that unit. Since the Governor issued Executive Order 01-09, and the hearings of this interim committee commenced, one of those labor organizations was decertified. However, many units are still being represented by labor organizations who do not have anywhere close to majority representative status. One unit of the Highway Department employees, with over 2000 employees in the unit, had only about 20 dues-paying members of the labor organization.

To correct this problem, not only for the employees of the State of Missouri, but also for those who work for local political subdivisions, the first proposed amendment attached hereto would amend RSMo §105.525 by adding additional provisions to ensure that labor organizations are certified only when they truly represent a majority of the employees in an appropriate unit, and that certification would last for not more than four (4) years, and provides procedures for the certification to be terminated based upon any misconduct or abuse of power of the labor organization.

2. The state Board of Mediation, which has responsibility for determining the appropriate unit and certifying majority representative status, due to budgetary constraints has

determined that it needs to conduct some of the balloting by mail. This is unworkable and not consistent with the way in which public elections in this state are normally conducted. For this reason, it is recommended that the Board of Mediation should have authority to assess costs to the labor organization and the state involved for conducting hearings to determine the appropriate unit and for conducting secret ballot elections, providing they are not elections conducted by mail.

3. In order to ensure that labor organizations conduct themselves properly under Missouri law, we are including in the definition of "labor organization" and in connection with the petitions for certification which are called for in the first amendment attached, some language that requires the Union to show that it is abiding by the law and not unlawfully coercing employees.

4. A fourth proposal attached suggests an addition to RSMo §105.969. That statute requires the Governor to adopt by Executive Order a Code of Conduct applicable to State employees of the Executive Branch, and then to require the Secretary of State, Treasurer, Auditor, Attorney General and Lieutenant Governor to do the same to govern their employees.

The fourth proposed legislation attached would add a third requirement to RSMo §105.969, to require that this Code of Conduct specifically prohibit any employee or officer of the State from seeking financial contributions or political support from labor organizations who are certified bargaining representatives of the agency or department in which said person works for the State.

The statute provides only that a majority in a unit may have an exclusive bargaining representative. There is no law against the remaining employees presenting their different views as guaranteed by the constitutional provision.

So, that's why it's constitutional in Missouri, is because the union represents only the majority.

Judge Hyde's opinion for the Supreme Court of Missouri, in 1947, is a landmark decision in this area, a 1947 decision. The question there was whether the City of Springfield could enter into a collective bargaining agreement. The argument was that here the constitution in Article I, §29 provides that all employees in the state of Missouri have a right to collective bargaining through representatives of their own choosing. So, the argument was that, therefore, that meant city employees in Springfield could have a collective bargaining agreement.

Judge Hyde's opinion for the Supreme Court of Missouri is still the law in Missouri and has been recognized and reiterated by numerous Supreme Court cases since 1947, and that collective bargaining, as known in the private sector cannot exist in the public employment, because there in the public employment, wages, hours and working conditions are matters for legislative action and it's a separation of powers doctrine that prevents the legislature from delegating those rights to somebody else like a labor organization, and the court said it's a familiar principle that legislative power cannot be delegated away and if it cannot be delegated away, it certainly cannot be bargained and contracted away, and that's why you cannot have binding collective bargaining agreements that are collective binding contracts in the public sector like you do in the private sectors.

So, that case by Judge Hyde quotes a letter from President Franklin D. Roosevelt which the opinion said was known to be a friend of labor, and that letter, as we've quoted here in my statement - "All government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitation when applied to public personnel management. The very nature and purposes of government make it impossible for the administrative officials to represent fully or to bind the employer in mutual discussions with government employee organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress. Accordingly, administrative officials and employees alike are governed and guided, and in many instances restricted by laws which establish policies, procedures or rules in personnel matters."

As prepared by Donald W. Jones, Labor Attorney and Advisor to the Senate Interim Committee on Public Employee Collective Bargaining.

On June 29, 2001, the Governor issued Executive Order No. 01-09, announcing that this would allow collective bargaining for State employees, with arbitration as the impasse resolution procedure. The new procedures grant to the unions some of the rights which unions have sought unsuccessfully for years from the General Assembly. (Pages 1 & 2, Jones Statement)

2. Legal Issues

2.1 The Executive Order Encroaches on the Exclusive Province of the General Assembly to Legislate. (Page 3, Jones Statement)

2.1.1 Changes of Procedures for Bargaining to Provide for Declaration of Impasse, Time Limits on Bargaining and Mediation & Arbitration Are Not Valid.

In a number of ways, Executive Order No. 01-09 purports to enlarge upon and change the obligations of agencies and departments of the State of Missouri, in meeting and conferring with union representatives. Paragraph 2 sets (1) a new sixty day time limit on the meetings, then (2) creates an option for either party to declare "impasse" and (3) invoke an advisory arbitration procedure. None of these three new procedural rules are contained in RSMO §105.500 et seq., And the Order has therefore sought to enact new procedures which have not been granted by the General Assembly, as required by the Missouri Constitution.

RSMO § 105.520 provides that once proposals have been received by the public body, "the public body or its designated representative or representatives shall meet, confer and discuss such proposals relative to salaries and other conditions of employment. . ." There is no provision for arbitration, and no time limits are included in the legislation. Paragraph 2(a) of the Order sets

forth a provision that, for the first time, Mediation shall be conducted by mediators selected from a list provided by the Federal Mediation and Conciliation Service (FMCS), "pursuant to 29 U.S.C. 172".

Paragraph 2(b) sets forth the arbitrary thirty day period within which the Arbitrator selected from the FMCS list "shall begin" his "hearings . . . with procedures prescribed by the Board and the provisions of Sections 435.350 to 435.470 RSMo, except when Section 435.460 shall be applicable to said proceedings". Who the "Board" is cannot be ascertained from the face of the Order. However, it is clear that the "State Board of Mediation" mentioned in RSMo § 105.525 only has authority under the statutes to resolve the issues with respect to appropriateness of bargaining units and majority representative status. If the Order now authorizes that board to determine the procedures to be used by the arbitrator, that is a drastic change from the statute which is beyond the power of the Governor to enact or decree.

The simple point is that the Governor is not a king who can issue edicts or decrees. To guard against that type of autocratic rule, our National and State Constitutions provide for three separate branches of government and create boundaries for each. Here, the area of legislation is within the boundaries of the General Assembly, and the Governor is outside the boundaries of the Executive branch in seeking to legislate where the General Assembly has elected not to do so, or to change legislation already enacted into law. See 0 4-8, 10-15. (Pages 5 & 6, Jones Statement)

2.1.2 Fair Share Provisions Violate Separation of Powers Principles

The statements in Paragraph 6 of the Order that the state agencies and departments may include in the Memoranda of Agreement "a provision requiring that all bargaining unit members

remit dues, fees, assessments or service fees of any type. . . (Page 8, Jones Statement)

The Executive Order 01-09 threatens to break those legislative promises, stating that employees will be subjected to fees to be deducted from their pay, by a decision of the Governor, like the change by the Mayor in Darby. The Governor here changed the rules to authorize a procedure that promises to reduce employee pay, without a change in the applicable legislation under RSMo Chapter 36. Although RSMo § 33.103 allows deductions, it is only if they are "voluntary" (0 29). The Executive Order appears to provide otherwise. (Pages 9 & 10, Jones Statement)

2.1.6 Fair Share Provision Contravenes Statutory Guarantees of Employee Freedom of Choice.

On this "fair share" point, the Executive Order seems to violate the principles discussed and quoted above from Darby, and those discussed at 0 29-31, 32-35, 40-43. Furthermore, RSMo § 105.510 guarantees employees they will be free of coercion - - "nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a labor organization . . ."

The debate between "free riders" and "captive passengers" involves a public policy determination, and that is up to the General Assembly in Missouri. Where the General Assembly has stated through RSMo § 105.510 that there shall be no coercion, directly or indirectly, to compel or intimidate anyone to "join" a union, that is the law and the Governor cannot change that by an order or a decree. (Page 15, Jones Statement)

When the Missouri General Assembly enacted RSMo § 105.510 and spoke of protections against coercion to compel employees to "join. . . a labor organization", that wording was

understood to mean any type of participation or financial contributions to the union. (Page 16, Jones Statement)

See also Justice Powell's concurring opinion in Abood v. Detroit Bd. Of Educ., 431 U.S. 209, 256, 95 LRRM 2411, 2429 (1977): "An individual can no more be required to affiliate with a candidate by making a contribution than he can be prohibited from such affiliation." Justice Powell argued that public employees should enjoy equal protection to withhold financial contributions to unions as the protection they have against being compelled to contribute to a political party. Chief Justice Rehnquist also concurred, stating at 431 U.S. at 243-244, 95 LRRM at 2432: "I am unable to see a constitutional distinction between a governmentally imposed requirement that a public employee be a Democrat or Republican or else lose his job, and a similar requirement that a public employee contribute to the collective bargaining expenses of a labor union." (Pages 17 & 18, Jones Statement)

2.1.7. Fair Share Provisions Violate Freedom of Choice Guaranteed Employees by Missouri Constitution as Well as Statutory Guarantees.

Missouri Constitution Article I, § 29 (Missouri employees shall have the right to organize and bargain collectively through representatives of their own choosing) has been construed to grant both freedom to join and freedom to refrain from joining or participating in union activity. (Page 19, Jones Statement)

The protection intended by RSMo § 105.510 (guaranteeing that public employees will not be coerced or intimidated directly or indirectly to "join" a labor organization), obviously should be broadly construed to grant full freedom of choice protection to public body employees in Missouri. It is not for the Governor's Order to interpret that statute or change or modify it. The

Governor's Order has clearly sought to do that and violates the separation of powers doctrine in so doing. (Page 21, Jones Statement)

The following sections show more clearly some of the controversial areas where the Executive Order has invaded the province of the General Assembly.

2.2 The Promise of the Executive Order to Agree with Unions to Coerce Employees to Pay Funds to the Union, Either as Dues or Fees or Fair Share Amounts, is Unlawful Confiscation Prohibited by the Fifth and Fourteenth Amendments of the U.S. Constitution, Article I, §§ 2, 10 and 29 of the Missouri Constitution, and the First Amendment Freedom of Speech of the U.S. Constitution and Violates the Protections Against Coercion to Require Employees to Join Unions in RSMo § 105.510 and The Protections Against Involuntary Assignments or Deductions Contained in RSMo § 136.150 and Related Provisions.

(Page 22, Jones Statement)

The Supreme Court in State ex rel. Missey v. City of Cabool, 441 S.W.2d 35 (Mo. 1969) avoided a collision between the RSMo §§ 105.500 (2), 105.520 grant of exclusive bargaining rights to unions, and Missouri Constitution Article III, § 40 (27), (28) and (30) provisions prohibiting local or special laws granting "exclusive" rights to associations, stating that the statutes only mean the union has exclusive rights to speak for the majority, and that the other employees still have undiminished constitutional rights to speak for themselves under Missouri Constitution Article I, § 29, and the First and Fourteenth Amendments of the U.S. Constitution. See 441 S.W.2d at p. 43, 70 LRRM p. 3399, where the Court states:

> The statute provides only that a majority of employees in a unit may have an exclusive bargaining representative and who it shall be. There is no Provision against the remaining employees presenting their differing views to the governing body and it already has been demonstrated that such right is guaranteed by constitutional provision. (Emphasis Added)
> (Page 23, Jones Statement)

2.3 The provisions for Mediation and Arbitration, Declaration of Impasse and Impasse Resolution are Void as Against Public Policy.

As stressed under Section 2.1 above, the questions of whether to have mediation and arbitration are matters for the policy formulation by the people's elected representatives, the General Assembly. (Page 26, Jones Statement)

The Court cited an article by Professor George W. Taylor which argues that third person arbitration is a greater threat to the performance of functions of representative government than the strikes which have been declared unlawful in Missouri. Taylor, *Public Employment: Strikes or Procedures*, 20 Industrial Labor Relations Rev. 617, 632 (1967). The court cited other commentators who questioned the propriety of government abdicating its responsibility to decide financial and other fundamental policy questions to an arbitrator who is not politically responsible and accountable, directly or indirectly, to the electorate, locally or statewide. Hildebrand, *The Resolution of Impasses Proceedings of the 20th Annual Meeting*, National Academy of Arbitrators, pp. 287, 291 (1967); Bernstein, *Alternatives to the Strike in Public Sector Labor Relations*, 85 Harv. L. Rev. 459, 467, (1971). "Deciding policy issues is the vocation of officials, not arbitrators". Berstein, supra. (Page 27, Jones Statement)

COMMENTS BY THE COMMITTEE ON STATE EMPLOYEE COLLECTIVE BARGAINING

Fairness to state employees by the Executive Branch is so important to the morale of the state employees. It should be the first priority of the Executive Branch to assure all state employees that their rights will be protected. The right to join a labor organization and the right not to join a labor organization is very basic.

The Executive Branch should protect the state employees' pay checks from any proposal to charge a service fee in lieu of union membership.

The Committee believes, after hearing from the Commissioner of Administration, Mike Hartmann, who later became the Chief of Staff for Governor Holden, it became obvious that the Administration was working hand in hand with complete endorsement of the union as expressed in the Executive Order 01-09.

Donald W. Jones stated that the NLRA does not apply to the public sector, state employees or state officials. Mr. Jones cited the fact that Governor Holden's action regarding the Executive Order 01-09 would not have been legal in the private sector and such action is illegal for the executives to interfere with union organization in the private sector.

Donald Jones further pointed out that the NLRA does not cover State or Political Subdivisions employers or employees. The definition of employer in 29 USC 152 (2) specifically excludes..... wholly owned government corporations and any Federal Reserve Bank or any State or Political Subdivision thereof.

Since the first meeting of the Senate Interim Committee on Public Employee Collective Bargaining there has been a Decertification Election which the union, AFSCME, lost by a vote of 2879 to decertify and 1503 voted to keep the union.

The Administration is bargaining at the present time. The first meeting was in July. The union, AFSCME, is asking for binding arbitration and the right to assess service fees to all employees who do not choose to be a member of the union.

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PLEASE RESPOND TO ST. LOUIS OFFI

December 18, 2000

Ms. Julie Gibson
1023 Country Ridge Drive
Jefferson City, MO 65109

Dear Julie:

Attached herewith is a proposed Executive Order for execution by the Governor and attestation by the then Secretary of State, Matt Blunt. In this regard, obviously the attestation signature line needs to be changed. The principal points of this Executive Order are as follows:

1. The "Whereas" clauses incorporate Governor Carnahan's earlier Memoranda of April 7, 1998 and June 19, 2000, and commit the Administration to the establishment of "a good faith negotiation framework".

2. The first paragraph commits State Departments and Agencies to act "in good faith" when they meet and confer with each other.

3. If after sixty (60) days of meet and confer sessions, the Union and State Department/Agency are unable to conclude negotiations toward a Memorandum of Understanding, then a Federal Mediator may be contacted to attempt to assist the parties in resolving outstanding issues. After sixty (60) days from notification of Mediation, either party may submit then outstanding issues to arbitration by an outside arbitrator supplied by Federal Mediation and Conciliation Service. The Arbitrator's decision shall be only a recommendation for consideration by the parties and shall not be binding unless agreed to by the parties. In this regard, many public entities, including such entities in this State as the Metropolitan Kansas City Transit Authority and the Bi-State Development Agency use Federal Mediation Arbitrators to resolve disputes.

4. The third paragraph of the Executive Order deals with those evidentiary issues which an Arbitrator may consider in resolving the disputes at issue.

5. The fourth paragraph states that all Memoranda of Agreement between State Departments and Certified Bargaining Representatives shall contain a grievance procedure with arbitration as a final resolution under that procedure. It notes that no arbitration award shall require any additional appropriation of funds and the award shall be limited to an interpretation of the terms of the Memoranda of Agreement.

6. The fifth paragraph states that any negotiated agreement shall become effective immediately, except for those portions which require additional legislative action. With respect to such portions, the Agreement shall not take effect until those legislative actions have been taken.

7. The sixth paragraph of the Executive Order states that failure of the General Assembly to prove any portion of a Memorandum of Agreement previously agreed to, but which portion requires General Assembly approval shall not constitute bad faith negotiation.

8. The seventh paragraph is a severability provision.

At this point, only you, Hugh McVey and the undersigned are aware of this proposal. It generally is based on proposals contained in earlier thought on this issue in previous legislative sessions. The non-binding nature of any agreement requiring legislative action protects the Governor from accusations of excess or abuse of power. Please let us know your thoughts on this matter. Our clients are willing to wait for adoption of this Executive Order until after the General Assembly ends in June, in spite of earlier commitments than an Order would be signed in January.

Thanks again for your continued help. Let us know your thoughts as soon as possible.

Very truly yours,

RONALD C. GLADNEY

RCG:ea
Enclosure

EXECUTIVE ORDER
01-09

WHEREAS, on the 7th day of April, 1998, Governor Carnahan issued a Memorandum pertaining to Unions representing State Employees; and

WHEREAS, on June 19, 2000, Governor Carnahan issued a Memorandum entitled "Addendum to Memorandum on Policies Relating to Unions Representing State Employees" issued on April 7, 1998; and

WHEREAS, I intend to incorporate and build upon the basic concepts of those Memoranda; and

WHEREAS, qualified and well-trained employees are vital to reducing the cost of government, improving its effectiveness and efficiency and achieving the goals of the State; and

WHEREAS, this Administration continues to be committed to the well-being of public employees of the State of Missouri and in continuing and improving good and meaningful relations with the unions that represent them; and

WHEREAS, this Administration continues to be committed to the establishment of a good-faith negotiation framework for the resolution of issues pertaining to all terms and conditions of employment;

NOW THEREFORE, I, BOB HOLDEN, Governor of the State of Missouri, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby order by virtue of this Executive Order as follows:

1. State departments and agencies within the Executive Branch and Certified Bargaining Representatives are expected to act in "good faith" when they meet and confer with each other. This requires both the certified bargaining representative and the State Department or Agency to approach negotiations with a sincere resolve to reach an agreement, requires both sides to meet at reasonable times and places to exchange information and to reduce to writing any item that is agreed to by both parties and requires both parties during the meet and confer process and at impasse on any issue involved in negotiation in a Memorandum of Understanding to adhere to the rules of the process contained herein. This Executive Order applies only to those State departments and agencies under the direct control of the Governor.

2. If, after sixty (60) days following the first meet and confer session between the parties in negotiations toward a Memorandum of Understanding, the parties have issues that are unresolved, then either party, through its representative, may, by written notification to the other party, notify said party of which issue or issues remain outstanding and of the notifying party's desire to proceed to impasse negotiation over said issues. The impasse negotiation procedure which State Departments and Agencies shall agree to shall consist of the following:

(a) Assistance by an impartial third party agreed to by both sides to reconcile all impasse issues and, if the parties cannot agree on a third party, then either party may, by written request, submit unresolved issues to Mediation by the Federal Mediation and Conciliation Service established pursuant to 29 U.S.C. 172. Such mediation shall consist only of suggestions and non-binding advice to resolve the impasse; said impasse mediation negotiations shall commence, if possible, within (30) days after receipt of written notification by the non-notifying side.

(b) If, after sixty (60) days from notification of the Federal Mediation and Conciliation Service, certain issues still remain the subject of impasse, the remaining issues may, on the written request of either party, be submitted to Arbitration for a final and determinative recommendation. The Arbitrator shall be chosen from a panel of seven (7) qualified Arbitrators from Missouri, provided by the Federal Mediation and Conciliation Service through its standard

name appears, which name shall be the Arbitrator for the parties involved in the dispute. The Arbitrator shall begin his hearings no later than thirty (30) days after the request for Arbitration in accordance with the procedures prescribed by the Board and the provisions of Sections 435.350 to 435.470, RSMo., except when Section 435.460 shall be applicable to said proceedings. The Arbitrator shall render a decision in writing no later than sixty (60) days after conclusion of the hearing. The cost of such Arbitration shall be borne equally by the two parties.

3. In making any recommendation pursuant to the impasse procedures authorized herein, the Arbitrator shall consider the following factors: (a) the effect of an agreement on the ability of the public body to provide public services at current levels; (b) the lawful authority of the public body; (c) the stipulations of the parties; (d) the interest and welfare of the public; (e) the financial ability of the public body to meet the costs of any items to be included in the contract; (f) a comparison of wages, hours and terms and conditions of employment of employees involved in the Arbitration proceedings with the wages, hours and terms and conditions of employment of other persons performing similar services in the public and private sector; (g) the average consumer prices for goods and services, commonly known as the cost of living or the consumer price index; (h) the overall compensation presently received by employees involved in the Arbitration, including, but not limited to wages, hours and terms and conditions of employment achieved through voluntary collective bargaining, mediation, fact-finding arbitration or otherwise.

4. All Memoranda of Agreement between State Departments and Agencies and Certified Bargaining Representatives shall contain a grievance procedure which shall apply to all disputes arising under the Memorandum of Agreement and which shall provide for final and binding arbitration for issues that may be legally binding under the Missouri Constitution and laws. Where resolution of any issue may not be final and binding under the Missouri Constitution and laws, then an Arbitrator must provide a written recommended resolution of all such disputes. No arbitration Award under this Section shall require any additional appropriation of funds and the Arbitrator's award shall be limited to an interpretation of terms of the Memorandum of Agreement.

5. After any negotiated agreement has been agreed to by a State Department or Agency and the exclusive bargaining representative of an appropriate unit of employees of that Department or Agency, any provision of the agreement which requires an additional appropriation of funds or which is found to be in conflict with the Missouri Constitution or laws shall take effect only on required approval of the appropriation of such funds or required legislative or Constitutional enactment. Any State Department or Agency which is governed by an autonomous board must have the approval of said autonomous board before a negotiated agreement is deemed final. That portion of a final agreement which does not require additional action by the General Assembly and does not require additional action by the General Assembly and does not require additional funds not previously appropriated to be expended by the State Department or Agency and does not otherwise conflict with a statute or the Constitution shall take effect immediately upon the agreement being reduced to writing and signed by the parties to the agreement. In case of conflict between the provisions of this Order and any provision of the Missouri Constitution or laws, the provisions of the Missouri Constitution or laws shall prevail and control. If a recommendation submitted by an Arbitrator pursuant to Paragraph 2 herein is not enforceable because it requires additional action such as appropriation of funds or is otherwise contrary to law or requires action from the legislative or executive branch prior to becoming enforceable, then said recommendation shall be entered but shall be of no force and effect until such action is taken.

6. All State Departments and Agencies may, whenever appropriate and feasible in view of all the circumstances, include in applicable Memoranda of Agreement, a provision requiring that all bargaining unit members remit dues, fees, assessments or services fees of any type to the Certified Bargaining Representative except to the extent that agreements between said State Departments and Agencies and the Certified Bargaining Representative shall not require as a condition of employment, the payment of a service fee in an amount greater than the dues which are payable by members of the employee organization to cover the cost of negotiation, contract administration, and other

activities of the employee organization which are germane to its function as the Certified Bargaining Representative. The Certified Bargaining Representative shall, as a condition of receiving such service fees, provide the following protections to persons required to pay such fees that object to paying all or a portion thereof:

(a) Notice, in writing, of the fee which will be payable, which may be expressed in a dollar amount or a percentage of the dues payable by members, and the basis upon which the Certified Bargaining Representative has determined such fee;

(b) An opportunity to challenge such determination and receive a prompt decision on such challenge by an impartial decision maker; and

(c) Escrowing of any portions of the service fee paid by a challenging bargaining unit member which is reasonably in dispute pending the determination.

Such an agreement may require the payment of a service fee commencing thirty (30) days after the beginning of employment or the effective date of such agreement, whichever is later. An Agreement entered into between the State Department or Agency and the Certified Bargaining Representative may include a provision for the checkoff of initiation fees and dues to the Certified Bargaining Representative or the payment of a service fee in lieu thereof as authorized in this paragraph.

7. Failure of the General Assembly to approve any portion of a Memorandum of Agreement previously agreed to, but which portion requires General Assembly approval to be valid, shall not constitute bad faith negotiation.

8. In the event that any provision of this order is deemed by a court of competent jurisdiction to be invalid or is invalidated by lawful action of the General Assembly, the remainder of this Order shall remain in full force and effect under general precepts severability.

9. Nothing contained herein shall be construed as encouraging or authorizing employees to strike or engage in any other illegal economic activity.

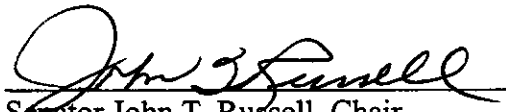
IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 29th day of June, 2001.

GOVERNOR BOB HOLDEN

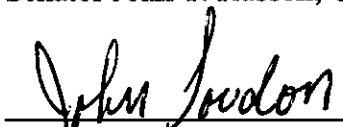
ATTEST:

MATT BLUNT, SECRETARY OF STATE

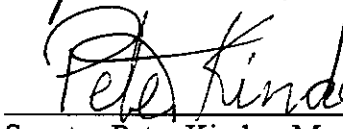
SENATE INTERIM COMMITTEE ON PUBLIC EMPLOYEE COLLECTIVE BARGAINING



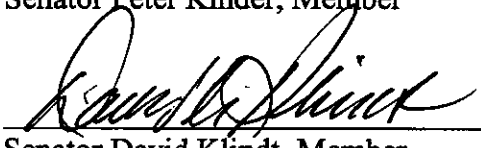
Senator John T. Russell, Chair



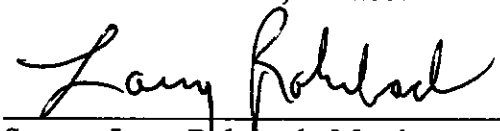
Senator John Loudon, Vice Chair



Senator Peter Kinder, Member



Senator David Klindt, Member



Senator Larry Rohrbach, Member

Senator Wayne Goode, Member

Senator Edward E. Quick, Member